

ORGANIZATION OF CALIFORNIA CLOSE CORPORATIONS

Business corporations authorized to issue stock, excluding such special organizations as cooperatives, credit unions, etc., are organized under the General Corporation Law, and particularly Title 1, Division 1, Chapter 2, California Corporations Code.

California Corporations Code [Sections 200-202](#) outline the minimum content requirements of Articles of Incorporation for stock corporations. [Section 158](#) of the Code specifically deals with statutory close corporations. The attached sample has been drafted to meet those **minimum** statutory requirements. The sample may be used as a guide in preparing documents to be filed with the Secretary of State to incorporate. It is, however, suggested that you seek private counsel for advice regarding the proposed corporation's specific business needs, which may require the inclusion of special permissive provisions or the formation of the corporation as a general stock corporation rather than formation as a close corporation.

The fee for filing Articles of Incorporation on behalf of a stock corporation is \$100.00. Check(s) should be made payable to the Secretary of State.

PLEASE NOTE: Businesses incorporating in California are subject to California corporation franchise tax requirements until such time as they formally dissolve. Information regarding franchise tax requirements can be obtained from the [Franchise Tax Board's Internet Web site](#) or by calling the Franchise Tax Board at 1-800-852-5711.

The original and at least two copies of the Articles of Incorporation should be included with your submittal. The Secretary of State will certify two copies of the filed document without charge, **provided that the copies are submitted to the Secretary of State with the original to be filed.** Any additional copies submitted with the original will be certified upon request and payment of the \$8.00 per copy certification fee.

Documents can be mailed or hand delivered for over-the-counter processing to the Sacramento headquarters office at:

Business Programs Division	(916) 653-2318
1500 11 th Street	
Sacramento, CA 95814	
Attention: Document Filing Support Unit	

OR

can be hand delivered for over-the-counter processing to any of the branch offices located in:

- | | |
|--|----------------|
| ♦ Fresno | (559) 243-2100 |
| 2497 West Shaw Avenue, Suite 101 | |
| Fresno, CA 93711 | |
| ♦ Los Angeles | (213) 897-3062 |
| The Ronald Reagan Building | |
| 12 th Floor South Tower, Room 12513 | |
| 300 South Spring Street | |
| Los Angeles, CA 90013-1233 | |
| ♦ San Diego | (619) 525-4113 |
| 1350 Front Street, Suite 2060 | |
| San Diego, CA 92101-3609 | |
| ♦ San Francisco | (415) 904-2344 |
| 121 Spear Street, Suite 420 | |
| San Francisco, CA 94105-1584 | |

- NOTE:**
- Cash is not accepted in the Los Angeles or San Diego branch offices.
 - Duplicate original documents must be submitted when filing in any of the branch offices.
 - Branch offices do not process mailed in documents.

A \$15.00 **special handling fee** is applicable for processing documents delivered in person at the public counter in the Sacramento Headquarters Office or in any of the branch offices located in Fresno, Los Angeles, San Diego and San Francisco. The \$15.00 special handling fee must be remitted by separate check and will be retained whether the documents are filed or rejected. The special handling fee does not apply to documents submitted by mail.

Preclearance or expedited filing of *eligible corporate documents* can be requested in a specified time frame, for an additional fee (in lieu of the \$15.00 special handling fee), as described in the [Preclearance/Expedited Filing Service Information](#). The preclearance/expedited filing service is not available in the branch offices.

When forming a new corporation you may need to contact one or more of the following agencies for additional information:

- ◆ The [Franchise Tax Board](#) - for information regarding **franchise tax requirements**.
- ◆ The [Board of Equalization](#) - for information regarding **sales tax** and/or **use tax** liability.
- ◆ The [Department of Corporations](#) - for information regarding **issuance** and **sale** of securities in California; Franchise Investment Law; Personal Property Brokers Law and/or Escrow Law requirements.
- ◆ The [Department of Consumer Affairs](#) - for information regarding **licensing** requirements.
- ◆ The [Employment Development Department](#) - for information regarding **disability unemployment insurance tax**.
- ◆ The [Director of Industrial Relations](#), Division of Worker's Compensation - for information regarding **worker's compensation** requirements.
- ◆ The [city and/or county clerk and/or recorder](#) where the principal place of business is located - for information regarding business licenses, fictitious business names (if doing business under a name other than the corporate name), and for specific requirements regarding zoning, building permits, etc. based on the business activities of the corporation.
- ◆ The [Internal Revenue Service](#) (IRS) - for information regarding **federal employer identification numbers**.

The Secretary of State does not license corporations or business entities. For licensing requirements, please contact the city and/or county where the principal place of business is located and/or the state agency with jurisdiction over the business, e.g. Contractors' State License Board.

CLOSE CORPORATIONS

The statutory concept of a “close” corporation is often confused with two other concepts having some elements in common. The three differing concepts are as follows:

- a) Statutory close corporation, as defined in [Section 158](#), California Corporations Code.
- b) Issuance of shares under a notice filing procedure with the Commissioner of Corporations pursuant to [Section 25102\(f\)](#) or [25102\(h\)](#), California Corporations Code.
- c) “S” corporation election pursuant to [Section 1372](#), Internal Revenue Code.

Adding to the confusion, the terms “close” corporation, “closed” corporation or “closely held” corporation are often used in a nontechnical sense simply to describe a corporation having a relatively small number of shareholders.

Each of the three concepts: statutory close corporation, notice filing procedure, and “S” election, is independent of the other two. It is not a condition to the use of the notice filing procedure or to the making of an “S” corporation election that the Articles of Incorporation state that the corporation is a close corporation or limit the number of shareholders of record. Experienced corporate counsel advises that the appropriate use of the statutory close corporation, even among corporations having 35 or fewer shareholders, is infrequent.

The three differences in the mandatory provisions of Articles of Incorporation forming a statutory close corporation and the Articles of Incorporation forming a general stock corporation are the name style requirement, the inclusion of wording denoting close corporation status and the reference to the number of persons entitled to hold issued shares.

INSTRUCTIONS:

Using the attached sample as a guide, Articles of Incorporation must be drafted to include all required provisions and may include other provisions, such as the names and addresses of the initial directors, if those provisions are permitted under California law. The Secretary of State's Office, however, does not provide samples that include permissive provisions. The document **must** be typed with letters in dark contrast to the paper. Documents that would produce poor quality microfilm will be returned unfiled.

Article I – The Articles must include a statement of the name of the corporation, which name must be exactly as you want it to appear on the records of the Secretary of State. The name of a close corporation must include the word “corporation”, “incorporated” or “limited” or an abbreviation of one of these three words.

Article II – This **exact** statement is required by the California Corporations Code and cannot be modified.

Article III – The Articles must include a statement as to the name and California address of the initial agent for service of process. The designated agent, whether an individual or a corporation, **must** agree to accept service of process on behalf of the corporation prior to designation. A corporation cannot designate itself as its own agent for service of process. When designating another corporation as agent, that other corporation **must have previously filed** a [Certificate Pursuant to Section 1505, California Corporations Code](#), with the Secretary of State. When a corporate agent is used, the address of the designated corporation must be omitted.

Article IV – The Articles must include a statement of the total number of shares that the corporation will be authorized to issue.

NOTE: Before shares of stock are sold or issued the corporation must comply with the Corporate Securities Law administered by the [Department of Corporations](#). For information regarding permits to issue shares please contact that agency.

Article V – This provision must be included as stated with the number of persons completed. Please note that the number of persons cannot exceed 35.

The Articles of Incorporation must be originally signed by an incorporator, or by directors, if initial directors have been named in the document. If directors are named, each director must both sign and acknowledge the articles. The names of incorporators or directors must be typed beneath their signatures.

The original and at least two copies of the Articles of Incorporation, together with the applicable fee, must be mailed or hand delivered to the Secretary of State's Office in Sacramento or hand delivered to the one of the branch offices located in Fresno, Los Angeles, San Diego or San Francisco. Branch offices do not process mailed in documents. If documents are submitted to a branch office, a duplicate original is also required.

To facilitate the processing of documents mailed to the Sacramento office, a self-addressed envelope and a letter referencing the corporate name as well as your own name, return address and telephone number should also be submitted.

ARTICLES OF INCORPORATION

I

The name of this corporation is _____ *(NAME OF CORPORATION)* _____.

II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the **GENERAL CORPORATION LAW** of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process is:

Name _____

Address _____

City _____ State **CALIFORNIA** Zip _____

IV

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue is _____.

V

This corporation is a **CLOSE CORPORATION**. All of the corporation's issued shares of stock, of all classes, shall be held of record by not more than _____ persons.

(Signature of Incorporator)

(Typed Name of Incorporator), Incorporator